IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3710 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VIRENDRABALA J TRIVEDI & 5 - Petitioner(s)
Versus
CHHOTADUDEPUR NAGAR PALIKA - Respondent(s)

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Appearance :
MR BHARAT T RAO for Petitioner(s) : 1 - 6.
MR VIREN G DAVE FOR MR HL JANI for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 21/03/2007

1. Leave to join Director of Municipalities as well as Director of Primary Education, State of Gujarat as party respondents No. 2 and 3. Notice of rule to the newly added parties. Shri Dipen Desai, learned AGP is directed to accept the notice on behalf of newly added party respondents No. 2 and 3.

2. By way of this petition under Article 226 of the Constitution of India respective petitioners serving as Tedagars/Teachers in the Bal Mandir run by the respondent-Nagarpalika have prayed for an appropriate writ, direction, order directing the respondent-Nagarpalika to place the petitioners in the pay scale of 950-1400 for Teachers and 750-1100 for Tedagars and to give them all the benefits admissible to the regular confirmed employees. It appears from the record that so far that petitioner No.1 is concerned she has already accepted voluntary retirement, petitioner Nos. 2 and 4 are serving as Tedagars and petitioner Nos. 3, 5 and 6 are serving as Teachers.

3. An affidavit-in-reply is filed on behalf of

respondent No.1-Nagarpalika pointing out that there are no sanctioned post of Tedagars and Teachers sanctioned by the State Government/Director of Municipalities of Tedagar and Teachers so far as Bal Mandirs run by the respondent-Nagarpalika is concerned. It is also further submitted in the reply that even the appointments of the Teachers were not made after following due procedure of selection and according to the Nagarpalika their appointments are back door entries. It is submitted that in absence of any sanctioned post the petitioners cannot be made permanent and they are also not entitled to regular pay scale which is available to the regularly appointed and confirmed employees. Considering the affidavit-in-reply the petitioners cannot be put in the pay scale of Rs.950-1400 for Teachers and 750-1100 for Tedagars and as the appointments of the Teachers are not on sanctioned posts and/or after following due procedure of selection they are not entitled to the benefits admissible to the regular confirmed employees.

4. However, there is a limited consensus between

the parties that the respondent No.1-Nagarpalika may approach the Director of Municipalities for sanctioning the post of Tedagars/Teachers in the Bal Mandirs run by them and the Director of Municipalities may consider the said proposal and if ultimately the posts are sanctioned by the Director of Municipalities and the State Government in that case fresh applications be invited by the Nagarpalika for filling up the said posts and the petitioners may also apply for the same and their cases may be considered in accordance with law and on merits without raising any dispute with regard to age bar. Under the circumstances, the respondent No.1-Nagarpalika is directed to submit necessary proposal with the Director of Municipalities for sanctioning of the posts of Tedagars and Teachers in the Bal Mandirs run by them within a period of four weeks from today and on receipt of such proposal Director of Municipalities and/or appropriate authorities are directed to consider the same in accordance with law and on its on merits in consultation with Director of Primary Education as it is submitted that at present Bal Mandir are run by the grant provided by the said

office. If ultimately any posts of Tedagars and Teachers in the Bal Mandirs are sanctioned by the Director of Municipalities the respondent No.1-Nagarpalika to invite applications for filling up the said posts by giving advertisement in local newspapers having wide circulation as well as calling the names from Employment Exchange for which the petitioners may also apply and their names should be considered in accordance with law and on merits without raising dispute with regard to age bar. The Director of Municipalities and appropriate authorities to take appropriate decision to sanction the post within a period of two months from the date of receipt of the proposal by the respondent No.1-Nagarpalika. If the posts are sanctioned the respondent No.1-Nagarpalika to complete the procedure for appointments on regular basis after inviting the applications as stated above and making the appointments within a period of three months thereafter. This entire procedure to be completed within a period of six months from today. Parties are directed to act accordingly. Until then the parties are directed to maintain status quo as on

today. With these directions, the present Special Civil Application is disposed of. Direct service is permitted.

[M.R.Shah, J.]

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